

**FILED**

JUN 11 2007

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
U.S. DISTRICT COURT  
CLARKSBURG, WV 26301

RUTH A. WYATT,

Plaintiff,

v.

CIVIL ACTION NO. 2:06CV112

MICHAEL J. ASTRUE,<sup>1</sup>  
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

REPORT AND RECOMMENDATION/OPINION

It shall be recalled that on November 22, 2006, Ruth A. Wyatt, the plaintiff, *pro se*, filed a Complaint in this matter [Docket Entry 1], along with an Application to Proceed Without Prepayment of Fees and Affidavit [Docket Entry 2]. On December 1, 2006, the undersigned United States Magistrate Judge entered an Order granting Plaintiff's Application to Proceed Without Prepayment of Fees, and directing the United States Marshal to effect service of process without prepayment of fees [Docket Entry 4]. A Summons was issued as to the Commissioner of Social Security, which was executed on December 11, 2006 [Docket Entry 6]. On February 1, 2007, Defendant Commissioner of Social Security filed his Answer to the Complaint, along with a copy of the Transcript of the Administrative Proceedings in this matter. The Certificates of Service indicate the Answer and the Administrative Transcript were each sent by U.S. Certified Mail to

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<sup>1</sup> On February 12, 2007, Michael J. Astrue became the Commissioner of Social Security. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Michael J. Astrue should be substituted, therefore, for former Commissioner Jo Anne B. Barnhart (or Acting Commissioner Linda L. McMahon [if the caption was changed previously]) as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. §405(g).

Plaintiff at Rt. 2, Box 134-1 Elkins, West Virginia, 26241, which is her address of record.

On April 3, 2007, the Court reviewed the docket in this matter, and determined that Plaintiff had not filed her Motion for Summary Judgment and Brief in Support. The Court directed Plaintiff to (and quoted) Local Rule of General Procedure 83.12(b), which provides:

Within thirty days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a brief in support of his or her claim(s) for relief. The plaintiff shall serve copies of his or her brief upon the United States Attorney's Office.

The Court then ordered:

Plaintiff shall file a motion and brief in support of her claims on or before May 4, 2007. Failure to do so will result in the undersigned entering a Report and Recommendation recommending to the District Judge that this case be dismissed.

(Emphasis added).

A review of the docket as of June 8, 2007, indicates that Plaintiff has not filed a motion or any other document since said order was entered on April 3, 2007. Therefore, the undersigned United States Magistrate Judge respectfully recommends Plaintiff's Complaint be dismissed for failure to prosecute and for failure to comply with the Court's April 3, 2007, order.

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Robert E. Maxwell, United States District Court Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4<sup>th</sup> Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4<sup>th</sup> Cir. 1985);

Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk is directed to send a certified copy of this Order to Plaintiff, *pro se*, and counsel for Defendant.

DATED: June // , 2007.

  
JOHN S. KAUL  
UNITED STATES MAGISTRATE JUDGE